

MISSOURI COURT OF APPEALS WESTERN DISTRICT

TIFFANY K. (MAHAFFEY) BRIZENDINE,

Appellant,

v.

BARTLETT GRAIN CO., LP,

Respondent.

DOCKET NUMBER WD78228

Date: December 22, 2015

Appeal from:
Jackson County Circuit Court
The Honorable Joel P. Fahnestock, Judge

Appellate Judges:
Division Two: Mark D. Pfeiffer, Presiding Judge, Lisa White Hardwick and James E. Welsh, Judges

Attorneys:
Herbert W. McIntosh, Kansas City, MO for appellant.
Jo S. Warmund, Kansas City, MO for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

TIFFANY K. (MAHAFFEY) BRIZENDINE

Appellant,

v.

BARTLETT GRAIN CO., LP,

Respondent.

WD78228

Jackson County

Before Division Two: Mark D. Pfeiffer, Presiding Judge, Lisa White Hardwick and James E. Welsh, Judges

Tiffany Brizendine appeals the circuit court's judgment finding against her and in favor of Bartlett Grain Company ("Bartlett") on her petition for damages after she was injured on Bartlett's property. Brizendine contends the court erred in refusing her withdrawal instruction regarding certain evidence, in allowing Bartlett to argue her negligence based upon that evidence in closing argument, and in allowing Bartlett to cross-examine her about the circumstances surrounding her change of employment after her injury.

AFFIRMED.

Division Two holds:

(1) The circuit court did not abuse its discretion in refusing to give the requested withdrawal instruction. Evidence that Brizendine failed to use her headlamp or flashlight on the night of her injury was relevant to the jury's determination as to whether she used the degree of care that an ordinarily careful person would use under the same or similar

circumstances. Moreover, because this evidence was properly before the jury, the court did not abuse its discretion in allowing Bartlett to rely upon it to argue Brizendine's comparative fault in closing argument.

(2) The circuit court did not abuse its discretion in allowing Bartlett to cross-examine Brizendine about the circumstances surrounding her change of employment after she was injured. This evidence was logically relevant because it bore on the issue of whether Brizendine left her job due to the injury's effect on her ability to perform her job. It was also legally relevant, in that it was neither unduly prejudicial nor used to attack her character.

Opinion by: Lisa White Hardwick, Judge

December 22, 2015

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